



Department of
Veterans Services

Title VI of the Civil Rights Act of 1964

Introduction

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Civil Rights Act of 1964”.

Course Objectives

- Overview of Title VI
- Theories of discrimination
- LEP/National Origin
- State agency obligations



Learning Objectives

What is Title VI?

- Title VI prohibits discrimination on the basis of:



Federal Law

- 42 U.S.C. § 2000d provides,



No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Tennessee Law

- Tenn. Code Ann. § 4-21-904



It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, ... or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving federal funds, on the basis of race, color, or national origin.

Scope of Coverage - Employment

- While Title VI was not meant to be the primary vehicle to prohibit employment discrimination, it does not forbid employment discrimination by recipients in certain situations.



Title VI and Employment Discrimination



- If a “primary objective” of the Federal financial assistance to a recipient is to promote employment, then the recipient’s employment practices are subject to Title VI.
- Otherwise, refer to Title VII of the Civil Rights Act of 1964, which covers employment discrimination based on race, color, national origin, religion, and sex. This is addressed in the State’s Policy on Workplace Discrimination and Harassment.

What must occur for Title VI to apply?

- The program or activity
 - Must be located in the United States
 - Must provide a service
 - Must receive direct (recipient) or indirect (sub-recipient) federal financial assistance

What is Federal Financial Assistance (FFA)?

- Award or grant of money;
- Loans, below fair market value subsidies;
- Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance;
- Surplus property;
- Training; and
- Detail of federal personnel.



What is a recipient?

A “recipient” receives FFA and/or operates a program or activity (e.g. a state, local or municipal department/agency, or other entity)

Primary Recipient -

Transfers or distributes assistance to another recipient or sub-recipient

Sub-recipient –

Distributes assistance to an ultimate beneficiary (e.g., contractors, subcontractors or grantees)

Beneficiaries

Individuals and/or entities who directly or indirectly receive an advantage through the operation of a federal program.

Examples of discriminatory practices

- Denying an individual any service, financial aid, or benefit.
- Providing a different service, aid or benefit, or providing them in a manner different that they are provided to others.
- Segregating or treating individuals separately in any manner related to receiving programs, services, or benefits.
- Retaliation.
- National Origin/Limited English Proficient (LEP) Discrimination.

Disparate Treatment



- Intentional discrimination against an individual.
- Must show that a challenged action was “motivated by an intent to discriminate.”

Evidence of Discriminatory Intent

- May be direct or circumstantial and may be found in various sources, including statements, historical background of events in issue, or a departure in standard procedure

Elements of Disparate Treatment

- The aggrieved person was a member of a protected class;
- That person applied for, and was eligible for a federally assisted program that was accepting applicants;
- That despite the person's eligibility, s/he was rejected; and
- The recipient selected, or continued to accept applicants of the complainant's qualifications.

Disparate Treatment

- Once the elements are established, the recipient has to show there was a “legitimate, nondiscriminatory reason” for the challenged action.
- It is then up to the investigating agency to determine whether there is sufficient evidence to establish that the recipient’s reason was a pretext for discrimination.

Disparate Impact

- Discrimination that occurs as a result of a neutral policy which appears harmless on the surface, but negatively affects a group.
- Focus concerns the consequences of a recipient's practices, rather than intent.



Elements of Disparate Impact

- The recipient's facially neutral policy or practice caused a disproportionate and adverse effect on members of a protected class
- Requires a comparison of the effects of the policy or practice on the relevant protected class relative to the effects on others
- May be shown through statistics or other evidence of a significant adverse impact upon the relevant protected class

Disparate Impact

- After the elements are established, the investigating agency must then determine whether the recipient can articulate a “substantial legitimate justification” for the challenged practice.

Substantial Legitimate Justification

- To prove, the recipient must show that the challenged policy was necessary to meet a goal that was legitimate, important, and integral to the recipient's institutional mission.

Disparate Impact

- If the recipient provides a substantial legitimate justification, the inquiry then focuses on whether a less discriminatory alternative was available.



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National Origin/ Language Discrimination

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Who is a Limited English Proficient Person?



- Persons who do not speak English as their primary language and who have limited ability to read, speak, write or understand English
- These individuals may be entitled to language assistance with respect to a particular type of service, benefit or encounter

National Origin/Language Discrimination

The Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974) provided that failure to provide information in languages other than English could result in discrimination on the basis of national origin where failure to do so results in a significant number of LEP beneficiaries being unable to fully realize the intended benefits of the federally assisted program or activity.

Basic Principle...

Provide “meaningful opportunity” to
access a program or activity

Executive Order 13166 (2000)

Presidential order that required each federal agency to develop LEP guidance that sets forth compliance standards recipients must follow to ensure that programs and activities that are normally provided in English are accessible to LEP persons.

Four – Factor Analysis

- The number or proportion of LEP persons in the eligible service population;
- The frequency with which LEP individuals come in contact with the program;
- The importance of the service provided by the program; and
- The resources available to the recipient.



Retaliation

Retaliation

- Occurs when a recipient or another person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with any right or privilege secured by Title VI, or because a person made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under Title VI.



Elements of Retaliation

- The complainant was engaged in a protected activity;
- The recipient knew of the complainant's protected activity;
- The recipient took some adverse action against the complainant; and
- There was a causal connection between the protected activity and the adverse action.

Retaliation

- Once the elements are established, the recipient must show it had a “legitimate, non-discriminatory reason” for the action.
- The investigating agency must then determine if the recipient’s reasons were pre-textual.

Filing a complaint

- There is a 180-day statute of limitations
- Individuals may file a complaint with the
 - Agency Title VI Coordinator
 - Tennessee Human Rights Commission
 - U.S. Department of Justice



Obligations



- Annually submit a Title VI Implementation Plan
- Handle complaints regarding discriminatory practices, including maintenance of a log of complaints received and notice of right to file a complaint
- Ensure public notification of relevant programs or activities
- Ensure minority participation on planning boards and advisory bodies

Summary

Bottom
Line!!!

“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”

(President John F. Kennedy, in his message calling for the enactment of Title VI, 1963)

Review Objectives

- Overview of Title VI
- Theories of discrimination
- LEP/National Origin
- State agency obligations

Test

- Click on the button below to be directed to the online Title VI test or you can exit out of the presentation and click on the test button on the Title VI webpage.

Title VI Test